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(Gloria Tando)

JAN 14 2008

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Gladney et al.

Application No.: 10/750,540

Confirmation No.: 5566

Filed: December 31, 2003

Art Unit: 3673

For: METHOD FOR MANUFACTURING
ENCASED MATTRESSES

Examiner: Fredrick C. Conley

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This amended Appeal Brief is submitted in response to a notification of Non-Compliant Appeal Brief mailed July 13, 2007, and in response to the Final Office Action mailed April 6, 2006, in support of the Pre-Appeal Brief and Notice of Appeal filed on October 6, 2006, and in response to the Notice of Panel Decision from Pre-Appeal Brief review mailed November, 6, 2006.

(i). **REAL PARTY OF INTEREST**

Appellants respectfully advise the Board that the real party in interest in the above-identified patent application is Dreamwell, Ltd., a limited liability company organized and existing under the laws of the State of Nevada, and having an office and place of business at 2325-B Renaissance Drive, Las Vegas, Nevada 89119, which is the assignee of this application

(ii). RELATED APPEALS AND INTERFERENCES

Appellants respectfully advise the Board that there are no other appeals or interferences known to appellants, their legal representative, or their assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal..

(iii). STATUS OF CLAIMS

Claims 14-34 are rejected in this application. Claims 29-34 were canceled without prejudice. Claims 14-28 are pending and on appeal. Claims 14-28 were finally rejected in the Final Office Action dated April 6, 2006. Claims 14 and 16 are independent claims; all other pending claims depend upon one or more of the independent claims. No claims have been allowed.

(iv). STATUS OF AMENDMENTS

Appellants canceled claims 29-34 without prejudice in an Amendment after Appeal under 37 C.F.R. §41.33, filed on January 11, 2008. Appellants have not submitted any other amendment pursuant to 37 C.F.R. § 1.116 or in reply to the April 6, 2006 Final Office Action (hereinafter "Office Action"), from which this appeal is being sought.

(v). SUMMARY OF CLAIMED SUBJECT MATTER

Appellants' independent claim 14 includes, but is not limited to, a mattress that includes an enclosure having a substantially rigid bottom panel and a sidewall forming a cavity, in which an innercore is placed. The innercore is joined to the bottom panel by an adhesive along the sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel. Independent claim 16 recites subject matter similar to that of claim 14, including specific groups of materials for the platform.

Support in the specification for claims 14 and 16 is found at least in the locations indicated in the following tables:

Claim 14	The Specification
A mattress comprising a substantially rigid bottom panel;	See, e.g., Pg. 2, par. 0011; Pg 4, par. 0019 and Pg. 8, par. 0034.
a perimeter sidewall joined to the bottom panel, said bottom panel and perimeter sidewall defining an interior cavity; and	See, e.g., Pg. 2, par. 0011; Pg 4, par. 0019 and Pg. 5, par. 0020.
an innercore having a bottom surface, said innercore disposed within the cavity	See, e.g., Pg. 3, par. 0012; Pg 4, par. 0019 and Pg. 5, par. 0023 and 0024.
wherein said a portion of the bottom surface of the innercore is joined to the bottom panel by an adhesive in a region proximate to the perimeter sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel.	See, e.g., Pg. 2, par. 0011, 0012; Pg 4, par. 0019 and Pg. 7, par. 0030.

Claim 16	The Specification
A mattress comprising a platform made of a composite material comprising one or more materials selected from the group consisting of foam, wood, and plastic;	See, e.g., Pg. 2, par. 0011; Pg 4, par. 0019 and Pg. 8, par. 0034.
a perimeter sidewall joined to the platform, said platform and perimeter sidewall defining an interior cavity; and	See, e.g., Pg. 2, par. 0011; Pg 4, par. 0019 and Pg. 5, par. 0020.
an innercore having a bottom surface, said innercore disposed within the cavity and said bottom surface joined to the platform by an adhesive in a region proximate to the perimeter sidewall, with the bottom surface being unattached to the bottom panel away from the perimeter sidewall.	See, e.g., Pg. 3, par. 0011, 0012; Pg 4, par. 0019, Pg. 5, par. 0023, 0024 and Pg. 7, par. 0030.

(vi). GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on this appeal:

Whether claims 14, 16, 17, 18, 20-21, 23 and 25-27 are unpatentable under 35 U.S.C. §103(a) over US patent No. 5,065,485 to Zocco,

Whether claims 15 and 24 are unpatentable under 35 U.S.C. §103(a) over US patent No. 5,065,485 to Zocco in view of US patent No. 5,040,255 to Barber, and

Whether claims 19, 22 and 28 are unpatentable under 35 U.S.C. §103(a) over US patent No. 5,065,485 to Zocco in view of US patent No. 6,760,940 to Gladney.

(vii). ARGUMENT

A. The Rejection under 35 U.S.C. §102(b)

In the Office Action, the Examiner rejected claims 29-30 and 32 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,065,485 to Zocco. Appellants hereby cancel claims 29-34 without prejudice. Accordingly, appellants respectfully submit that the rejection of claims 29-34 is moot and request that the rejection of these claims be withdrawn.

B. The Rejection under 35 U.S.C. §103(a) over Zocco

Claims 14, 16, 17, 18, 20-21, 23 and 25-27 are finally rejected under 35 U.S.C. 103(a) over Zocco (US 5,040,255). Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

For an office action to establish a prima facie case of obviousness against a claim, the prior art reference or references used to form the rejection must, either alone or in combination, teach or suggest all the claim limitations. MPEP § 2143. The cited reference, however, fails to teach or suggest all of the limitations of independent claims 14 and 16.

The Office Action alleges that:

1. Zocco discloses a substantially rigid bottom panel (claim 14), and
2. "a portion of the bottom surface of the innercore is joined to the bottom panel by an adhesive in a region proximate to the perimeter sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel," as recited in independent claim 14, and with similar language in independent claim 16.

Appellants must respectfully disagree. Zocco discloses a frame joined to a bottom panel and defining an opening, and an innerspring disposed within the opening. Regarding the alleged disclosure by Zocco of a substantially rigid bottom panel, Zocco describes his innerspring mattress cover as follows:

Bottom (10) and top (11) panels are made of the same density foam. The frame (1), which is preferably made of higher density foam than the top (11) and bottom (10) panels, holds components of the invention within the frame (1) during assembly of the device, and also gives a person sleeping on the enclosed innerspring mattress subassembly (100) complete edge support, and 100% sleeping surface edge support. (See Zocco, Col. 3, lines 56-63)

The bottom panel (10) in Zocco is disclosed as being made of a lower density foam than the frame (1). In contrast, the bottom panel recited in the claims is formed of "substantially rigid" material and would have to be able to support the sidewall and the innercore sitting on top. One of ordinary skill in the art would not see the bottom panel (10) in Zocco as being the bottom panel recited in the claims, especially since the frame (1) is taught as being of higher density and used to provide edge support. Therefore the bottom (10) (and likewise the top (11)) cannot be considered as being "substantially rigid", as recited in line 2 of claim 1.

Regarding the alleged attachment of the innercore to the bottom panel/platform, Zocco discloses in col. 3, line 64, to col. 4, line 10, of the '485 patent:

A filling material (3) is then laid into the opening (2) in the frame. The filling material (3) may be made of any common mattress filling material, such as cotton, foam, poly-foam, wool or other fibers. The first layer of filling material (3)

may be glued to the inside surface of the bottom panel (10). Either one or several layers of filling material may be used.

After the filling material (3) is placed inside of the frame (1), an innerspring insulator (4) is placed upon the filling material (3). The insulator (4) layer may be made of any common mattress insulator material, such as sisal, coconut fiber, burlap, resin-treated pads, or similar material. The insulator (4) prevents the filling material (3) from falling into the mattress spring (5) after the device has been assembled.

Zocco glues the insulator (3) to the top (10) and bottom (11) panels. Zocco states explicitly (col. 4, lines 12 – 13; and also col. 6, lines 17 – 18) that "[a]fter the insulator (4) is placed inside of the frame (1), an innerspring (5) is placed inside of the frame, centered within the frame." {Emphasis added} Accordingly, Zocco does not disclose or suggest gluing the innercore mattress subassembly (100) to the bottom panel/platform or to anything else.

Zocco further discloses (col. 6, lines 60 – 63) as an alternative approach that "[a]n enclosed innerspring mattress of essentially the character of the preferred embodiment can be constructed without gluing of the filling material to the top and bottom panels." This further demonstrates that Zocco does not attach the innercore mattress subassembly with an adhesive. Zocco therefore fails to disclose that the innercore is joined to the bottom panel by an adhesive. Only the insulator (3) and possibly the filling material (4) are joined to the bottom panel by an adhesive, while the innercore is simply placed on top of the insulator/filling material.

The Office Action further states that applying the adhesive in a specific pattern would be an obvious modification, as would be application of an adhesive in a region proximate to the perimeter of the side wall with a remaining portion of the bottom surface being unattached to the bottom panel.

The specific pattern recited in claims 14 and 16 was carefully selected by the inventors to replace the conventional attachment of the innerspring unit to a lower border wire

which is then joined to the support layer. (see paragraph [0007] of the originally filed specification).

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

None of the references expressly or impliedly suggest applying the glue over less than the entire surface or in a specific pattern. Moreover, the Examiner fails to present any line of reasoning as to why the artisan would have considered it obvious to apply the glue in the specific claimed pattern in light of the teachings of the references.

For at least these reasons, appellants respectfully submit that the Board should reverse the rejection of independent claims 14 and 16 under 35 U.S.C. § 103(a). Because claims 17, 18, 20-21, 23 and 25-27 depend from, and are limited by, claims 14 or 16, the Board should reverse the §103 rejection of these claims as well.

C. The Rejection under 35 U.S.C. §103(a) over Zocco in view of Barber

Claims 15 and 24 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over US patent No. 5,065,485 to Zocco in view of US patent No. 5,040,255 to Barber. Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below.

U.S. Patent 5,040,255 to Barber, now applied in conjunction with Tocco against 15 and 24, was previously cited in the Non-Final Office Action dated October 17, 2005, against original claims 14 – 28. Barber states: "Glue or adhesive is applied at location 50 and 52, on the bottom surface of insulator 22 and the top surface of insulator 20 to maintain the relative position of springs 30 and assembly 18." (col. 2, lines 15-41). Barber's string of encased springs or

spring casing assembly 18 is joined by an adhesive to the interior of the cavity. (col. 1, lines 35-39). Barber leaves no doubt that the entire surface of the top side of insulation piece 20 is coated with an adhesive.

To provide support for the springs and maintain the relative position of springs in the cavity, Barber needs to attach substantially all the spring to the bottom of the cavity. Attaching the springs in the cavity only along the perimeter would render Barber's invention so modified unsatisfactory for its intended purpose, so there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

For at least these reasons, appellants respectfully submit that the Board should reverse the §103 rejections of independent claims 15 and 24.

D. The Rejection under 35 U.S.C. §103(a) over Zocco in view of Gladney

Claims 19, 22 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over US patent No. 5,065,485 to Zocco in view of US patent No. 6,760,940 to Gladney. Appellants respectfully traverse this rejection and request that it be overturned for at least the reasons set forth below

For at least the reasons discussed in section (vii)(D) of this paper, Zocco alone or in combination with Gladney fails to teach or suggest all the elements of claims 19, 22 and 28. Accordingly, there can be no prima facie case of obviousness and the Board should reverse the §103 rejections of claims 19, 22 and 28.

E. Conclusion

For the reasons given above, it is respectfully urged that the final rejection be reversed and that all pending claims be allowed.

Claims 14 and 16 are patentable over the references of record. Claims 15 and 20-28 which depend from independent claim 14, and claims 17 – 19, which depend from independent claim 16, are therefore also patentable for at least the reasons that claims 14 and 16 are patentable.

Appellants authorize the Commissioner to withdraw the extension of time fee from Deposit Account 18-1945. Appellants believe this response is being timely filed and no further fees are necessary. If there are any other fees not accounted for above, Appellants authorize the Commissioner to charge the fee to Deposit Account 18-1945.

If there are any questions after reviewing this paper, the Examiner is invited to contact the undersigned at (617) 951-7000.

Dated: January 11, 2008

Respectfully submitted,

By 

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(viii). CLAIMS APPENDIX

1-13 (Canceled)

14. A mattress comprising

a substantially rigid bottom panel;

a perimeter sidewall joined to the bottom panel, said bottom panel and perimeter sidewall defining an interior cavity; and

an innercore having a bottom surface, said innercore disposed within the cavity,

wherein said a portion of the bottom surface of the innercore is joined to the bottom panel by an adhesive in a region proximate to the perimeter sidewall, with a remaining portion of the bottom surface being unattached to the bottom panel.

15. The mattress of claim 14, wherein the innercore comprises pocketed springs and the adhesive bonds fabric surrounding the pocketed springs to the bottom panel.

16. A mattress comprising

a platform made of a composite material comprising one or more materials selected from the group consisting of foam, wood, and plastic;

a perimeter sidewall joined to the platform, said platform and perimeter sidewall defining an interior cavity; and

an innercore having a bottom surface, said innercore disposed within the cavity and said bottom surface joined to the platform by an adhesive in a region proximate to the perimeter sidewall, with the bottom surface being unattached to the bottom panel away from the perimeter sidewall.

17. The mattress of claim 16, wherein the platform comprises a plurality of layers.
18. The mattress of claim 16, wherein the mattress is a two sided mattress, with the platform forming a second sleeping surface.
19. The mattress of claim 16, wherein the platform comprises a high density polyurethane foam having a density of approximately 1.85 lbs./cu. ft. and a firmness above 30 ILD.
20. The mattress of claim 14, further comprising an upholstery layer disposed over a top surface of the innercore.
21. The mattress of claim 14, wherein the perimeter sidewall is made of foam.
22. The mattress of claim 14, wherein the bottom panel comprises a layer of high density foam.
23. The mattress of claim 14, wherein the bottom panel forms a substantially rigid base platform that comprises a layer made of a material selected from the group consisting of wood, cardboard, plastic or foam, said material capable of providing support to the innercore.
24. The mattress of claim 14, wherein the innercore is selected from the group of open coil innercores, fabric-encased spring coil innercores, and springs in foam innercore.
25. The mattress of claim 14, wherein the innercore comprises a block of resilient foam.
26. The mattress of claim 14, wherein the perimeter sidewall is attached to a peripheral region of a major surface of the bottom panel by an adhesive.
27. The mattress of claim 14, wherein the perimeter sidewall comprises a plurality of sidewall sections.

28. The mattress of claim 14, and further comprising a wire for securing the innercore against the substantially rigid bottom panel.

29-34 (Canceled)

(ix). EVIDENCE APPENDIX

None.

(x). RELATED PROCEEDINGS APPENDIX

None.